

1 **IN THE UNITED STATES DISTRICT COURT**

2 **FOR THE DISTRICT OF PUERTO RICO**

3
4 UNITED STATES OF AMERICA,) CASE NO. 17-CR-087 (FAB)
5 Plaintiff,))
6 vs.)) SENTENCING HEARING
7 FRANCISCO SEVERINO-PACHECO,))
8 Defendant.))
9

10 TRANSCRIPT OF SENTENCING HEARING
11 HELD BEFORE THE HONORABLE JUDGE FRANCISCO A. BESOSA
12 SAN JUAN, PUERTO RICO
13 Wednesday, July 12, 2017

14 APPEARANCES:

15 For the United States:

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21 For the Defendant:

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transcription

Joe Reynosa, CSR, RPR
Official Court Reporter

1 (PROCEEDINGS COMMENCED AT 10:05 A.M.)

2
3 THE CLERK: Criminal Case No. 17-087, United States
4 of America versus Francisco Severino-Pacheco for Sentencing
5 Hearing.

6 On behalf of the Government, Assistant United
7 States Attorney Jonathan L. Gottfried.

8 On behalf of the Defendant, Assistant Federal
9 Public Defender Isabelle C. Oria-Calaf.

10 Defendant is present and assisted by the certified
11 court interpreter.

12 MR. GOTTFRIED: Good morning, Your Honor. The
13 Government is ready to proceed.

14 MS. ORIA-CALAF: Good morning, Your Honor. AFPD
15 Isabelle Oria on behalf of Mr. Francisco Severino-Pacheco.

16 THE COURT: Ms. Oria, first of all, thank you for
17 your sentencing memorandum. I have read it.

18 MS. ORIA-CALAF: Thank you, Your Honor.

19 THE COURT: Is there anything you would like to say
20 on behalf of Mr. Severino?

21 MS. ORIA-CALAF: Yes, Your Honor.

22 THE COURT: Or anything that you would like to
23 highlight from your sentencing memoranda?

24 MS. ORIA-CALAF: Your Honor, first, I would like,
25 for purposes of clarity of the record, that the pre-sentence

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1 report has Mr. Severino's 13-year-old-long partner's name
2 incorrect. It's not Rendy. It's Zeendy, Z-E-E-N-D-Y.

3 THE COURT: We will make that change in the
4 pre-sentence investigation report. Thank you.

5 MS. ORIA-CALAF: Thank you, Your Honor.

6 Now, with regards to Mr. Severino, the Court has
7 already acknowledged that a sentencing memo was filed at
8 docket 23 and that the Court has considered it.

9 I would also like to acknowledge the presence of
10 Ms. Carmen Pacheco and Zeendy Crespo. Carmen Pacheco is
11 Mr. Severino's mother. She is here in support of her son.
12 And Zeendy is his partner for 13 years now. She is also here
13 in support of Mr. Severino.

14 Now, Your Honor, we drafted all the reasons in
15 support of why we are requesting a guideline sentence in this
16 case in our sentencing memo, so we won't go over, but I would
17 like to address a point. And it's with regards to
18 Government's sentencing memo.

19 Now, Your Honor, I will be treading very carefully
20 because Your Honor is considering a very serious offense.
21 This is a very serious weapon to be carrying, but I need the
22 Court to note at least the following:

23 Now, on Government's sentencing memo, Government is
24 requesting an upward variance based on the facts of this
25 case. But we have to address a fact that the memo mentions,

1 and it's that Mr. Severino admitted to firing the gun.

2 But, Your Honor, when we reviewed our notes, after
3 reviewing that memo from the change of plea hearing, we noted
4 that when Government offered what they would be able to prove
5 beyond a reasonable doubt in this case, that fact was not
6 mentioned. It wasn't mentioned because we had previously
7 spoken to brother counsel about it, about our client's --
8 about our client's -- he does not admit to having stated
9 that.

10 Now, Government did state about his admissions, and
11 he --

12 THE COURT: You would admit, however, that at
13 sentencing hearings, the burden is preponderance of the
14 evidence.

15 MS. ORIA-CALAF: I do, Your Honor. I do. But at
16 least I have to, for purposes of the record and for
17 Your Honor to consider, state the following:

18 Now, the Government did express during their
19 proffer admissions that my client made. Those admissions
20 were limited to that he had purchased the gun for \$1,600 and
21 that he knew that that firearm had been welded, but nothing
22 was stated about the alleged shooting.

23 Now, as Your Honor also knows, in this case, he was
24 the passenger of --

25 THE COURT: Excuse me. By welded, do you mean that

1 it could fire automatically?

2 MS. ORIA-CALAF: Right, Your Honor. That's what I
3 mean.

4 So there was another person in the car, which was
5 the driver, and who got away. He ran away. Mr. Severino
6 stayed there.

7 Now, these alleged admissions, Your Honor, no
8 evidence of corroboration by the police has been given to us.

9 For example, this interview was not recorded.
10 Another example, if that was the case, that Mr. Severino did
11 admit to that, no paraffin testing to show that he had
12 gunpowder residue was done. Also, Your Honor, no report
13 linking these alleged casings that were found to match the
14 firearm that Mr. Severino was in possession of.

15 Now, Your Honor, like I said at the beginning, I am
16 not mentioning this so that Your Honor -- to make this
17 offense less serious. It is very serious.

18 We are standing here before you. Mr. Severino pled
19 guilty timely. He accepted full criminal responsibility for
20 that, but I must request the Court to note that.

21 Because, as Your Honor began this sentencing
22 hearing, we submitted a sentencing memorandum that is in
23 agreement with what has been expressed by Mr. Severino at the
24 pre-sentence interview. And that is why we mention that.

25 Now, Your Honor, also, we were provided, just

1 yesterday, with the documents that verify Mr. Severino's
2 education, high school diploma and his barber certificate,
3 and we have already told probation office that we have them.
4 And we will be submitting them as evidence that, indeed, he
5 has been completed his education.

6 Now, Your Honor, we would just like to further
7 point out that Mr. Severino has the ability to lead a life
8 that -- just as he was providing for his children but that
9 ensues appropriate decisions to make in cases where he feels
10 that his family needs protection, or that he needs protection
11 because of his environment.

12 And as we have spoken --

13 THE COURT: Have there been any threats against him
14 or his family?

15 MS. ORIA-CALAF: Well, Your Honor, you know, in our
16 sentencing memo, we mention that Mr. Severino lives in a
17 community that is with high crime. And we have talked about
18 that issue and what he needs to -- what would be an
19 appropriate response to a situation like that. And an
20 appropriate response would be to relocate, for example.

21 So I understand that Mr. Severino has acknowledged,
22 and there is introspection as to the severity of the offense
23 he has committed and what he needs to do to move forward and
24 not engage in this type of crime.

25 THE COURT: Well, without a specific threat, I

1 don't think the Government can do anything about relocating
2 him, unless his family relocates on their own.

3 MS. ORIA-CALAF: Oh, no, Your Honor. I am sorry if
4 I misspoke. I didn't mean that Government needed to. I
5 meant that he needed to. If he felt that there was any
6 situation like that, that there are appropriate measures that
7 he himself can take into his own hands and that we have
8 spoken about what needs to be done.

9 THE COURT: Well, it may be to his benefit and his
10 family's benefit to move from where they live, period, for
11 whatever reason, if you say it's a high crime area.

12 MS. ORIA-CALAF: Right.

13 THE COURT: Just about every public housing project
14 is a high crime area.

15 MS. ORIA-CALAF: Right.

16 THE COURT: Okay. All right.

17 Anything else?

18 MS. ORIA-CALAF: That would be all for us.

19 Mr. Severino has short words for the Court.

20 THE COURT: Okay. But first I would like to hear
21 from Mr. Gottfried.

22 MS. ORIA-CALAF: Yes, Your Honor.

23 MR. GOTTFRIED: Your Honor, as indicated in docket
24 number 26, the Government's sentencing memorandum, we are
25 seeking a variance here, a ten-month variance, for a total of

1 40 months of imprisonment.

2 Briefly, with respect to sister counsel's point
3 about the admission that he made regarding the firearm, this
4 was in paragraph 10 of docket number 21, which is the
5 pre-sentence report, where it states in bold font,
6 "Severino-Pacheco stated that he decided to fire a burst from
7 his firearm outside the window for no apparent reason.

8 "Severino-Pacheco stated that he did not have the
9 high capacity magazine fully loaded, but he only had around
10 14 rounds inside it."

11 There was no objection that was filed to that
12 statement in the pre-sentence report. And, yes, the
13 Government did mention that in its pre-sentencing memoranda.

14 Regardless of whether or not the Court decides to
15 rely upon that admission, nonetheless, we think that a
16 variance is warranted for two principle reasons.

17 One is just the nature of the offense conduct. We
18 are dealing with a machine gun -- no doubt about that -- high
19 capacity magazine that the Defendant was carrying in a car.
20 Again, these are undisputed.

21 The second issue here is that we are dealing
22 against -- or dealing with a backdrop of just rampant gun
23 violence. I know the Court read the memoranda, but I will
24 just briefly highlight certain statistics.

25 One, according to the Puerto Rico Police

1 Department, almost 90 percent of the murders committed in
2 2017 in Puerto Rico were caused by firearms, with the
3 majority of violence perpetrated on public streets or in open
4 areas.

5 Two, according to the United Nations, Puerto Rico's
6 rate of homicides resulting from gun violence has topped the
7 United States and the world. On this island, the rate of
8 homicides from gun violence has been greater than Honduras,
9 greater than El Salvador.

10 Three, according to statistics compiled by the
11 United Nations, a higher percentage of people die of gun
12 violence on this island than in Lebanon, than in Mexico, than
13 in South Africa.

14 Four, according to 2015 statistics supported by the
15 FBI, Puerto Rico has the second highest rate of murder in the
16 country. It's second only to the District of Columbia.

17 And, lastly, the murder rate is particularly high
18 is urban areas, such as where this offense was committed, and
19 it affects disproportionately young urban males.

20 And so we think for these reasons, Your Honor,
21 under the 3553(a) factors, namely, to reflect the seriousness
22 of the offense, the nature and circumstances of the offense,
23 and to protect the public from further crimes by the
24 Defendant, a variance is warranted.

25 THE COURT: Mr. Severino, is there anything that

1 you would like to say?

2 DEFENDANT SEVERINO-PACHECO: Yes.

3 THE COURT: Please go ahead.

4 DEFENDANT SEVERINO-PACHECO: Good morning.

5 THE COURT: Excuse me, Mr. Severino. Are you going
6 to read something?

7 MS. ORIA-CALAF: Yes, Your Honor, he is.

8 THE COURT: Okay. Read the entire thing in
9 Spanish, and then we will have the interpreter go up there
10 and translate the entire thing.

11 So go ahead, Mr. Severino.

12 THE COURT INTERPRETER: Good morning.

13 First, I would like to beg my family and the
14 Court's forgiveness.

15 The decision to have an illegal weapon was
16 mistaken.

17 I will be separated from my family, the sometime
18 that I will be in prison, but when I get out, I want to have
19 a nice life and work for them.

20 Thank you.

21 THE COURT: First of all, Mr. Severino, I
22 appreciate the fact that you have apologized to your family.
23 Many people come here having done something wrong, and after
24 they did whatever they did that was wrong, they know or they
25 find out that one of the consequences of their actions is the

1 suffering of their family. Sometimes the family suffers more
2 than the person who comes before me, so I appreciate the fact
3 that you have apologized for that.

4 On April 4, 2017, Defendant Francisco
5 Severino-Pacheco pled guilty pursuant to a straight plea to
6 the indictment in Criminal No. 17-087, which charges a
7 violation of Title 18, United States Code section 922(o), the
8 illegal possession of a machine gun, which is a class C
9 felony.

10 The November 1st 2016 Edition of the Sentencing
11 Guidelines Manual has been used to calculate the guideline
12 adjustments pursuant to the provisions of guideline section
13 1B1.11(a).

14 Based on the provisions of guideline section
15 2K2.1(a)(4)(B), a base offense level of 20 has been
16 determined because Mr. Severino has been convicted of
17 possessing a machine gun, which is a firearm that is
18 described in Title 26, United States Code section 5845(a),
19 and was a prohibited person, a drug user, at the time he
20 committed the offense.

21 He also had in his possession a high capacity
22 magazine.

23 Because Mr. Severino timely accepted responsibility
24 for his offense, however, the offense level is reduced by
25 three levels pursuant to guideline sections 3E1.1(a) and

1 3E1.1(b) .

2 There are no other applicable guideline
3 adjustments. His total offense level is 17.

4 Mr. Severino has been previously adjudicated as a
5 juvenile for a controlled substance violation. That
6 adjudication, however, does not result in criminal history
7 points pursuant to sentencing guideline section 4A1.2(e)(4) .

8 Mr. Severino was also arrested in 2012 for a
9 controlled substance offense, but the case was dismissed for
10 lack of probable cause during the preliminary hearing.

11 Therefore, Mr. Severino does not have any criminal
12 history points, and his Criminal History Category is I.

13 Based on a total offense level of 17 and a Criminal
14 History Category of I, the guideline imprisonment range for
15 Mr. Severino's offense is from 24 to 30 months. There is a
16 fine range of \$10,000 to \$95,000, plus a supervised release
17 term of from one to three years.

18 The probation officer has correctly adjusted the
19 guideline computations, and the pre-sentence investigation
20 report satisfactorily reflects the components of
21 Mr. Severino's offense by considering its nature and
22 circumstances.

23 The Court has also considered the other sentencing
24 factors set forth in Title 18, United States Code
25 section 3553(a) .

1 The Government has cited Police of Puerto Rico and
2 United Nations statistics concerning the use -- concerning
3 homicides in Puerto Rico by the use of firearms. Not only
4 have the police and the United Nations indicated that crime
5 in Puerto Rico far exceeds the limits on the mainland, the
6 First Circuit Court of Appeals itself has recognized it.

7 Violent crimes and murders are occurring at all
8 hours of the day, in any place on the island, even on
9 congested public highways, in shopping centers, public
10 basketball courts, and at cultural events.

11 Firearms, including automatic firearms, like the
12 one Mr. Severino possessed, are present everywhere, obtained
13 illegally by persons like Mr. Severino who have had no
14 training in the proper use of weapons and who appear not to
15 have the means to purchase them.

16 The Government cited statistics in which
17 Puerto Rico appears as only behind the District of Columbia
18 in the number of murders per one hundred thousand population.
19 But as I have stated before, from 2011, when there were more
20 than 1,100 murders reported on the island, to 2015, when
21 there were 546 murders, this decrease has been due to a large
22 extent to the firearms initiative which the Puerto Rico
23 Department of Justice and the United States Attorney's Office
24 have implemented.

25 Unfortunately, the number of murders for 2016 were

1 more than those in 2015. The reason is not known, but I have
2 stated before that during the last year of the previous
3 administration, the Superintendent of Police was perhaps more
4 interested in granting further promotions to officers who
5 perhaps did not -- were not supposed to be promoted, rather
6 than completing a crime prevention program.

7 As the Court of Appeals has indicated, this Court
8 must consider Puerto Rico's high firearms and violent crime
9 rate to impose the sentence in this case.

10 A District Court may take into consideration for
11 sentencing the community and geographic factors where the
12 offense took place. In this District, for this type of
13 weapons crime, the community that the Court takes into
14 consideration is the entire island of Puerto Rico because gun
15 crimes are not limited to one particular area or region of
16 the Commonwealth.

17 As the First Circuit has also said, deterrence is
18 an important factor in the sentencing calculus. Title 18,
19 section 3553(a) requires the Court to consider preventing
20 criminal behavior by the population at large, not just by the
21 defendant being sentenced.

22 Mr. Severino is 29 years old. He has a high school
23 education, was employed performing odd jobs in maintenance
24 prior to his arrest for his offense and has a history of
25 using marijuana.

1 Today Mr. Severino has requested a sentence at the
2 low end of the guideline range, 24 months.

3 The Government has requested a variant sentence of
4 40 months, ten months above the high end of the guideline
5 range.

6 The Court has considered what it has mentioned
7 before about Puerto Rico's high crime rate, Mr. Severino's
8 personal characteristics, and the nature of his offense.

9 The Court has given weight to the fact that
10 Mr. Severino admitted to possessing an automatic firearm
11 knowing that it was illegal to do so and that for no apparent
12 reason he fired the weapon without hesitation regardless of
13 the consequences. That act was irresponsible and put at risk
14 lives of innocent person who could have been caught in the
15 path of the bullets.

16 A modern machine gun can fire more than 1,000
17 rounds a minute allowing a shooter to kill dozens of people
18 within a matter of seconds.

19 As the Ninth Circuit Court of Appeals has
20 indicated, short of bombs, missiles and biochemical agents,
21 we can conceive of few weapons that are more dangerous than
22 machine guns. Machine guns largely exist on the black
23 market. Machine guns are highly dangerous and unusual
24 weapons that are not typically possessed by law-abiding
25 citizens for lawful purposes.

1 The Court agrees with the Government and finds that
2 a sentence above the guideline range reflects the seriousness
3 of the offense, promotes respect for the law, protects the
4 public from further crimes by Mr. Severino, and addresses the
5 issues of deterrence and punishment.

6 Accordingly, it's the judgment of the Court that
7 Francisco Severino-Pacheco is committed to the custody of the
8 Bureau of Prisons to be imprisoned for a term of 40 months.

9 Upon release from confinement, Mr. Severino shall
10 be placed on supervised release for a term of three years to
11 be served under the following terms and conditions:

12 He shall observe the standard conditions of
13 supervised release recommended by the United States
14 Sentencing Commission and adopted by this Court.

15 He shall not commit another Federal, State or local
16 crime.

17 He shall not possess firearms, destructive devices
18 or other dangerous weapons.

19 He shall participate in vocational training and a
20 job placement program as recommended by the probation
21 officer.

22 He shall provide the probation officer access to
23 any financial information upon request.

24 He shall remain under curfew at his residence of
25 record from 6:00 p.m. to 6:00 a.m. for a period of six months

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1 to commence upon his release from imprisonment.

2 During this time, he shall remain in his residence,
3 except for employment or other activities approved in advance
4 by the probation officer.

5 He shall wear an electronic device 24 hours a day
6 and shall observe the rules specified by the probation
7 officer.

8 He is ordered to pay the daily cost of the
9 electronic device.

10 Payment shall be pleased on his ability to pay or
11 the availability payments by third parties as approved by the
12 Court.

13 In addition to any other telephone or cell phone
14 that he may have, Mr. Severino shall maintain a telephone at
15 his resident without a modem, an answering machine, or
16 cordless future during the term of electronic monitoring.

17 He shall cooperate in the collection of a DNA
18 sample as directed by the probation officer pursuant to the
19 revised DNA collection requirements and Title 18, United
20 States Code section 3563(a)(9).

21 He shall submit himself and his property, house,
22 residence, vehicles, papers and effects, computers and other
23 electronic communication or data storage devices or media to
24 a search at any time, with or without a warrant, by the
25 probation officer and, if necessary, with the assistance of

1 any other law enforcement officer, but only in the lawful
2 discharge of the supervision functions of the probation
3 officer, who must have a reasonable suspicion of unlawful
4 conduct or of a violation of a condition of supervised
5 release.

6 The probation officer may seize any electronic
7 communication or electronic device or medium, which will be
8 subject to further forensic investigation or analysis.

9 Failure to permit a search and seizure may be
10 grounds for revocation of supervised release.

11 Mr. Severino shall warn any other resident or
12 occupant that his premises may be subject to searches
13 pursuant to this condition.

14 He shall not possess or use controlled substances
15 unlawfully and shall submit to a drug test within 15 days of
16 release from imprisonment.

17 After his release, Mr. Severino shall submit to
18 random drug testing, not less than three samples during the
19 supervision period, but not more than 104 samples each year,
20 in accordance with the Drug Aftercare Program Policy of the
21 United States Probation Office as has been approved by this
22 Court.

23 If the illegal use of controlled substances is
24 detected in any samples, Mr. Severino shall participate in an
25 inpatient or an outpatient substance abuse treatment program

1 for evaluation or treatment as arranged by the probation
2 officer.

3 Payment shall be based on his ability to pay or the
4 availability of payments by third parties as approved by the
5 Court.

6 He shall meet any legal obligation to support or
7 make payment toward the support of any person, including any
8 dependent child, any parent or caretaker of a dependent
9 child, or a spouse or former spouse.

10 Having considered Mr. Severino's financial
11 condition, a fine is not imposed.

12 A special monetary assessment in the amount of \$100
13 is imposed, however, as required by law.

14 Mr. Severino, you have a right to appeal your
15 conviction and sentence.

16 A notice of appeal must be filed in this court
17 within 14 days from when the judgment of the Court is
18 entered.

19 You may apply for leave to appeal *in forma pauperis*
20 if you are unable to pay the cost of an appeal.

21 Because you are represented by court-appointed
22 counsel, she will continue to represent you through any
23 appeal unless a substitute counsel is later appointed.

24 Anything else, Ms. Oria?

25 MS. ORIA-CALAF: No, Your Honor.

1 Permission to withdraw.

2 THE COURT: Is there any particular place that you
3 would like me to designate Mr. Severino?

4 MS. ORIA-CALAF: Yes, Your Honor. That would be
5 Fort Dix in New Jersey. He has a dear aunt who could visit
6 him.

7 THE COURT: I will recommend that the Bureau of
8 Prisons designate Mr. Severino to Fort Dix, that he
9 participate in any vocational training at the institution to
10 which he may -- in which he may be interested, and that he
11 take courses in English as a Second Language. That will help
12 him when he is released.

13 You are excused.

14 MS. ORIA-CALAF: Thank you, Your Honor.

15 Is this a one-count case, Mr. Gottfried?

16 MR. GOTTFRIED: Yes, Your Honor.

17 THE COURT: Thank you.

18 You are excused.

19
20 (PROCEEDINGS ADJOURNED AT 10:35 A.M.)

1 REPORTER'S CERTIFICATE
2

3 I, JOE REYNOSA, Official Court Reporter for the
4 United States District Court for the District of Puerto Rico,
5 appointed pursuant to the provisions of Title 28, United
6 States Code, Section 753, do hereby certify that the
7 foregoing is a true and correct computer-aided transcript of
8 proceedings had in the within-entitled and numbered cause on
9 the date herein set forth; and I do further certify that the
10 foregoing transcript has been prepared by me or under my
11 direction.

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